REMARKS

Examiner has rejected Claims 1-8 under 35 U.S.C. § 102(b) as being anticipated by *Jamieson* (6,098,830). In response thereto, Applicant has amended Claims 1, 2, 5 and 6, and respectfully traverses Examiner's rejection.

Jamieson ('830) does teach an apparatus for covering an opening in a can. However, Applicant respectfully asserts that *Jamieson* ('830) does not utilize, anticipate, teach or render obvious a can sealing apparatus that fits down into the opening in the top of a can, **creating a seal irrespective of whether a can tab is upwardly extended.** The "cap" referenced by Examiner slides under the can tab and locks to the rim of the can prior to opening. Thereafter, the "cap" is rotated, along with the can tab, in order to cover the exposed opening. Such positioning of the can tab would prevent the use of Applicant's device.

Thus, the configuration and operation of *Jamieson* ('830) is unlike Applicant's device, wherein Applicant's cap may be secured to the can only after opening, and only if the can tab is not rotated to extend over the can opening. Therefore, Applicant respectfully asserts that because the identical invention is not shown, "The identical invention must be shown in as complete detail as is contained in the...claim," *Richardson v. Suzuki Motor Co.*,

868 F.2d 1226, 1236 (Fed. Cir. 1989), *Jamieson* ('830) does not anticipate Applicant's device.

Applicant's invention is distinguished because Applicant's cap is not integral to the can lid, nor does Applicant's cap extend over or lock onto the peripheral edge of the can. Applicant's cap simply secures into the can opening while the can tab is in the traditional post-opening position, thereby easily facilitating subsequent access to the can contents without necessitating further movement of the can tab. This efficient, subsequent access is not possible with *Jamieson* ('830).

Applicant has amended Independent Claims 1 and 5 to clarify and more succinctly define that Applicant's peripheral flange incorporates a receiving port for a flip-top can tab. Because "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference," *Verdegaal Bros. V. Union Oil co. of California*, 814 F.2d 628, 631 (Fed. Cir. 1987), and because *Jamieson* ('830) does not describe each and every element of Applicant's device, Applicant believes that Applicant's Independent Claims 1 and 5, as amended, are distinguished over *Jamieson* ('830).

Further, Applicant has amended Claims 2 and 6 to clarify and more succinctly define the depression in the cap, wherein the

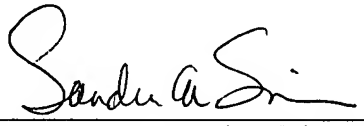
depression cooperates with the pull-tab notch in the cap to facilitate placement in the presence of a pulled pull-tab. Because "[t]he elements must be arranged as required by the claim," *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990), and because *Jamieson* ('830) does not include nor arrange the elements as required in Applicant's claims, Applicant believes that Applicant's Claims 2 and 6, as amended, are distinguished over *Jamieson* ('830).

Applicant believes that the foregoing amendments and arguments distinguish the claims over the prior art and establish that Applicant's claimed invention is novel and non-obvious, thereby placing the rejected independent claims 1 and 5 and all remaining depending claims in condition for allowance.

CONCLUSION

The above-made amendments are to form only and thus, no new matter was added. Applicant respectfully believes that the above-made amendments now place the Claims and application in condition for allowance. Should the Examiner have any further questions and/or comments, Examiner is invited to telephone Applicant's undersigned Attorney at the number below.

Respectfully submitted, this 20th day of December, 2004.



Sandra M. Sovinski, Esq.
Reg. No. 45,781

MYERS & KAPLAN,
INTELLECTUAL PROPERTY LAW, L.L.C.
1899 Powers Ferry Road
Suite 310
Atlanta, GA 30339
(770) 541-7444
(770) 541-7448 facsimile
ssovinski@mkiplaw.com -- Email
Attorney Docket Number: 25980-RA